

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

SHIRLEY HYMAN, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No. 2:15-cv-13769
)	
v.)	Hon. Stephen J. Murphy, III
)	Magistrate Judge Mona K. Majzoub
TV GUIDE MAGAZINE, LLC, a Delaware)	
limited liability company,)	
)	
Defendant.)	

**DEFENDANT’S MOTION FOR LEAVE TO FILE
SECOND AMENDED MOTIONS TO DISMISS AND STAY**

Pursuant to Fed. R. Civ. P. 12(b)(1), 28 U.S.C. § 1332(d)(2), 28 U.S.C. § 1332(d)(3), 28 U.S.C. § 1332(d)(4), 28 U.S.C. § 1332(d)(10), and other governing statutes, rules, and case law, Defendant, TV Guide Magazine, LLC (“Defendant” or “TV Guide”), by and through its undersigned counsel, hereby files its Motion for Leave to File Second Amended Motions to Dismiss and Stay (“Motion for Leave”). In support of this Motion for Leave, Defendant states as follows:

1. On April 1, 2016, Defendant filed its Motion to Dismiss, *With Prejudice*, for Lack of Subject-Matter Jurisdiction Or, Alternatively, to Decline to Exercise Subject-Matter Jurisdiction (the “Motion to Dismiss”). (Doc. No. 9.) On April 4, 2016, Defendant filed an amended Motion to Dismiss, which included tables of contents and authorities inadvertently omitted from the initial filing. (*See* Doc. No. 13, at pp. 4-6.)

2. The amended Motion to Dismiss seeks dismissal of Plaintiff’s Class Action Complaint and Demand for Jury (“Complaint”) on three grounds: (1) the Court lacks diversity jurisdiction over this case (*see* Doc. No. 13, at pp. 11-14); (2) the Court “shall decline to exercise

jurisdiction” over this case based on the “home state” and “local controversy” exceptions under 28 U.S.C. § 1332(d)(4) (*see id.* at pp. 15-18); and (3) to the extent there is any discretion over dismissal, despite the grounds for mandatory dismissal referenced above, the Court should exercise such discretion to dismiss the Complaint “in the interests of justice” under 28 U.S.C. § 1332(d)(3) (*see id.* at pp. 18-22).

3. On April 4, 2016, Defendant filed its Motion to Stay Class-Action Certification Issues and Discovery Pending Adjudication of Motion to Dismiss and Enactment of Statute That Would Bar Recovery of Any Penalties (“Motion to Stay”). (Doc. No. 11.) On April 6, 2016, Defendant filed an amended Motion to Stay, which included several pages that were inadvertently omitted from the initial filing. (*See* Doc. No. 14, at pp. 1-4.)

4. The Motion to Stay requests a stay of class-certification and discovery issues pending two potentially dispositive matters: (a) Defendant’s Motion to Dismiss, if granted, would conclude this action with prejudice (*see* Doc. No. 14, at pp. 1-2, 11), and (b) the Michigan House and Senate had passed separate bills to amend the operative statute – the Michigan Video Rental Privacy Act (“MVRPA”) – to prohibit statutory penalties and require allegations and proof of actual damages (*see id.* at pp. 2, 12-13).

5. After Defendant filed its amended Motion to Dismiss and amended Motion to Stay, the Michigan Senate passed the Michigan House’s bill, which has been presented to the Governor. As a result, Defendant’s second amended motions update the Court with regard to this potentially dispositive amendment that has taken a significant step closer to becoming law.

6. In addition, after Defendant filed its amended Motion to Dismiss and amended Motion to Stay, counsel for Plaintiff and Defendant have met and conferred regarding: (a) the proper definition of Defendant’s citizenship, for diversity purposes, under the Class Action

Fairness Act (“CAFA”), which defines the dual citizenship of “unincorporated associations” as the state of organization and the state in which they have their “principal place of business” (28 U.S.C. § 1332(d)(10)); and (b) the retrospective application of the MVRPA amendment that bars the recovery of statutory penalties. Accordingly, the second amended motions address issues raised by Plaintiff’s counsel, and argue that those issues do not defeat or counter the need for the Court to grant both the Motion to Dismiss and the Motion to Stay.

7. Defendant submits that the proposed second amended motions would promote sound case management and judicial economy by: (1) including all of Defendant’s arguments in its respective motions, rather than in supplemental memoranda, and (2) addressing issues raised by Plaintiff’s counsel regarding the legal bases for both motions.

8. Attached hereto are the second amended motions: Exhibit A is Defendant’s second amended motion to dismiss and supporting memorandum; and Exhibit B is Defendant’s second amended motion to stay and supporting memorandum.

9. Defendant hereby certifies that, pursuant to Local Rule 7.1(a), Defendant’s counsel and Plaintiff’s counsel engaged in conferences during which they discussed and agreed regarding the need for Defendant to file second amended motions to dismiss and stay.

WHEREFORE, for the reasons set forth herein, the Court should: (a) grant this Motion for Leave; (b) grant Defendant leave to file a second amended motion to dismiss and motion to stay; and (c) grant such further relief as the Court deems just and appropriate.

Dated: April 26, 2016

Respectfully submitted,

TV GUIDE MAGAZINE, LLC

/s/ Hillard M. Sterling
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, Hillard M. Sterling, certifies that on April 26, 2016, he electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Hillard M. Sterling_____

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